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IN THE

SUPREME COURT

OF THE

STATE OF WASHINGTON

IN THE MATTER OF THE DISBARMENT OF HULET M. WELLS, an Attorney-at-Law.

No. .....

PETITION AND SUPPORTING BRIEF OF RESPONDENT.

GEORGE F. VANDERVEER,
Attorney for Respondent.

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Comes now the respondent in the above entitled cause, by G. F. Vanderveer, his attorney, and respectfully petitions the Court to review and reverse the recommendations of the Board of Law Examiners herein upon the following grounds:

STATEMENT OF THE CASE.

The respondent's disbarment is sought on the ground that he was convicted of an offense "involving moral turpitude and involving the violation of his oath as an attorney."

The allegation in the complaint that the offense of which Mr. Wells was convicted was one involving the violation of his oath as an attorney seems to be entirely without merit; and inasmuch as it has not heretofore been discussed by our opponents or even considered by the Board of Law Examiners, we will dismiss it from consideration without further mention.

Believing that the offenses charged in the indictment were not offenses involving moral turpitude, the respondent demurred to the complaint and elected to stand on his demurrer. This presents the only issue for review.

Stripped of its legal verbiage, the indictment charges the respondent with conspiring by

force to oppose the authority of the United States, and to prevent, hinder and delay the execution of the Joint Resolution of April 6, 1917, declaring a state of war to exist between the United States and the Imperial German Government and authorizing the president to employ the entire military and naval forces and other resources of the Government to carry on said war. True, the second count refers to other Federal statutes which it is alleged the defendant conspired by force to prevent, hinder and delay the execution of; but even a casual examination of these statutes will suffice to show that they all relate to routine matters of military administration and throw no new light on the moral quality of the offense charged.

It is important to observe that the date of the offenses charged in both counts is April 25, 1917, three weeks prior to the passage of the Selective Service Act. And it is also important to note, in considering the moral quality of Mr. Wells' offense, that he is not accused of conspiring to procure anyone else to commit a crime.

ARGUMENT.

It is elementary that one cannot conspire either to violate or to obstruct the enforcement of a law until after the law has been passed.

U. S. v. Crafton, Federal Case 14881;
In re Wolf, 27 Federal 606, 612;
U. S. v. Cruikshank, 92 U. S. 542;
U. S. v. Hulet M. Wells, decided by Judge Neterer in September, 1917.

It is equally elementary that one cannot conspire to obstruct or impede the administration of justice unless justice is actually being administered and the accused knows of it.

Pettibone v. U. S., 148 U. S. 179, 201;
U. S. v. Bittinger, 15 Am. L. R. (N. S.) 49;
U. S. v. Kee, 39 Fed. 603.

It seems equally plain that one cannot conspire to obstruct the execution of a law unless, in point of fact, such law is in process of execu-

tion and the accused knows of it. The application of these principles to the instant case is this: The Selective Service Law had not even been passed by Congress on the date of the conspiracy alleged against Mr. Wells. Consequently in considering the moral quality of his act we must entirely ignore that law and all that the President of the United States was authorized to do under its provisions. For a similar reason we must ignore the question whether between the 6th and 25th days of April, 1917, the President of the United States was attempting to employ the military and naval forces and other resources of the Government because it is nowhere alleged in the indictment that this was a fact or that the defendant knew it to be a fact, or that he conspired to obstruct such activities. And it is a matter of common knowledge that nothing of this sort was attempted by the President until the passage of the Selective Service Act which provided an entirely new scheme of military mobilization. Mr. Wells was not accused of a conspiracy against any officer of the Gov-

ernment or a conspiracy to prevent, hinder or delay any officer in the performance of any duty. The indictment is barren of the slightest suggestion of this kind. In short, the accusation against him was that he conspired with others to challenge the authority of the Govern to enter into war with Germany, and conspired to oppose the execution of the war program. As stated in the report of the Board of Law Examiners, our theory is that Mr. Wells' acts "merely constituted opposition to war, and that inasmuch as war itself is wrong, he could not be guilty of any offense involving moral turpitude in opposing what was wrong."

Manifestly the words "moral turpitude" can not be read out of the statute. The word "turpitude" alone involves the idea of moral obloquy and the repetition of the word "moral" adds emphasis to our contention that the respondent must now be judged solely by reference to the moral quality of his act.

In State Board of Medical Examiners vs. Harrison, 92 Wash. 577, 583, the constitutionality of the medical practice act was attacked

on the ground that the words "moral turpitude" were so vague and uncertain as to render the act indefinite and void. In reply to this suggestion the Court said:

> "Those words are capable of accurate definition and are well understood, as we so determined In re Hopkins, 54 Wash. 569."

In the Hopkins case this Court quoted with evident approval the following definitions from Bouvier's and Anderson's law dictionaries:

> "Everything done contrary to justice, honesty, modesty or good morals is said to be done with turpitude";

and

> "To do a thing against good morals, honesty or justice; unlawful conduct; infamy."

In that case this Court also said that the moral quality of the crime

> "must be determined from the inherent moral nature of the act, rather than from

> the degree of punishment which the statute law imposes therefor."

In Fort v. City of Brinkley, 112 S. W. Rep. 1084-5, the Court said:

> "Moral turpitude implies something immoral in itself, regardless of the question of whether it is punishable by law. The doing of the act itself and not its prohibition by statute, fixes the moral turpitude";

and the whole method of discussion pursued in the Hopkins case endorses this view.

In the Hopkins case this Court resolved the question before it by appeal to the precepts of the Holy Bible; and we think it might prove illuminating to test the issue in this case by reference to the same standard. There is not to be found in all the world, in any language, any moral code but condemns murder, rapine and poison gas, or the slaughter, starvation or ravishing of women and children, which modern warfare implies.

Evidently recognizing this fact, the Board of Law Examiners begged the whole question by saying:

> "We may treat the question of war as wrong in the abstract, and it would be better if some method of settling controversies between peoples and nations could be devised, but this war was thrust upon our country by an enemy threatening civilization, and as a matter of self-defense and in order to perpetuate the principles of free government, the Congress deemed it necessary to enter the war."

Such effusions were common enough during the war, and are still to be expected wherever public orators may be found appealing to the passions and prejudices of men; but they are entirely out of place in any sober, intellectual discussion of moral problems.

In truth, all the Board's comments on patriotism and the duty of the patriotic citizen to rush to the defense of his country's cause seem entirely out of place in this discussion. Patriotism may or may not be a fine thing. That depends a good deal on the viewpoint. There are those who argue with a good deal of reason that it is merely an appeal to the passions and prejudices of men; that it blinds them to the horrible truths about war; and that without it

war would be impossible. However this may be, patriotism is by no means synonymous with morality. Otherwise our enemies in the late war were morally quite justified in ravishing and bayoneting the women of Belgium, for undoubtedly they were inspired to this by patriotism. By this standard the "unspeakable" Turk is also morally quite justified in all the atrocities committed against the Armenians, for not only was he inspired to these acts by patriotism, but they were committed in the cause of a "holy war."

The Board of Law Examiners again begs the entire question when it says:

> "We do not think moral turpitude should be confined to mere acts of baseness, vileness or depravity, but can well be applied to the acts of an individual who does and assists in the doing of acts having for their purpose the obstruction and hindering of the United States Government in time of war."

If by this it is meant that moral turpitude is a thing of such flexible meaning that it can be

either stretched or shrunk to suit the social needs or ideals of the time or place, we must again disagree with the Board. History records many times and places in which the rack, pillory, thumb-screw and torture chamber were established legal institutions, presumably enpoying the same full measure of public approval and endorsement as once did the recent war, and there are still places where cannibalism is an established social institution; but we believe the immorality of all such institutions is too firmly established to yield to any pressure of public necessity, convenience or hysteria, no matter how universal. And the same is true of war. If war, murder, rape, starvation, poison gas and submarines are not iniquitous in every moral sense, then the word "moral" has lost all meaning. Let us concede, for apparently we must, that it is wrong in every political and social sense to continue to oppose war when the danger of war becomes imminent; but let us not confuse so-called political and social duties with moral duties nor try to befog the issue by hectic appeal to patriotic duty. Such

things are not only out of place but out of reason in this day of peace conferences.

Four cases are cited by the Board to sustain its views:

In In re Arctander, 110 Wash. 296, the respondent was disbarred for conduct in violation of the Act of 1917; and it is not even suggested that his acts involved moral turpitude.

In In re Hofstede, 173 Pac. 1087, the respondent had been convicted of procuring others to commit crimes, viz.: refusing to register under the Selective Service Act. We may concede that it is immoral to procure another to commit a crime, which is presumably not only an unsocial act, but subjects the perpetrator to punishment.

In In re Kerl, 188 Pac. 40, the respondent was convicted of making **false statements** with intent to interfere with the success of the military and naval forces of the United States. Again we concede that lying is immoral, with-

out very much regard to the purpose of the liar.

The only remaining case is In re O'Connell, 194 Pac. 1011; and the less said about that the better.

Respectfully submitted,

G. F. VANDERVEER,

Attorney for Respondent.

We hereby acknowledge due and legal service of the foregoing Brief by the receipt of three copies thereof this.....day of....., 1921.

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ATTORNEYS FOR APPELLANT.